

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

JAMES LEE MCCLAIN, ET AL.,)
Plaintiffs,)
VS.) No. 18-1241-JDT-cgc
MADISON COUNTY SHERIFF'S)
DEPARTMENT, ET AL.,)
Defendants.)

ORDER TO MODIFY THE DOCKET, GRANTING PLAINTIFF PACHECO-LOPEZ'S
MOTION TO PROCEED *IN FORMA PAUPERIS* (ECF No. 13),
GRANTING PLAINTIFF HORTON ADDITIONAL TIME TO COMPLY,
AND DISMISSING ALL OTHER PLAINTIFFS

On June 25, 2019, this Court dismissed two Plaintiffs from this matter and granted motions to add fifteen Plaintiffs, bringing the total number of Plaintiffs to twenty-nine. (ECF No. 11.) The Court also ordered each remaining Plaintiff to submit within thirty days a proper affidavit to proceed *in forma pauperis* and a copy of his trust account statement for the preceding six months. (*Id.* at PageID 42.) The Court warned that if any Plaintiff failed to comply with the order within the thirty days, the Court would "deny him leave to proceed *in forma pauperis* and dismiss that Plaintiff from this action without further notice pursuant to Federal Rule of Civil Procedure 41(b), for failure to prosecute." (*Id.* at PageID 43.) The Court sent a copy of the order and an *in forma pauperis* application to each Plaintiff at his provided address.

The time within which to file the required financial documentation has expired. Only two Plaintiffs have submitted applications to proceed *in forma pauperis*: Willmer Omar Pacheco-Lopez¹ and Larry D. Horton. (ECF Nos. 13 & 15.) The information set forth in Pacheco-Lopez's motion satisfies his burden of demonstrating that he is unable to pay the civil filing fee. Accordingly, his motion for leave to proceed *in forma pauperis* is GRANTED in accordance with the terms of the PLRA.² A separate order will be issued assessing Pacheco-Lopez's *pro rata* share of the \$350 filing fee.

Plaintiff Horton did not submit a copy of his trust account statement along with his *in forma pauperis* affidavit. In a letter to the Court, Horton states that he has not been able to get a copy of that statement and requests more time to obtain it. (ECF No. 18.) Horton is therefore GRANTED 30 additional days from the date of this order, through September 6, 2019, to submit a copy of his trust account statement.

Five Plaintiffs have not filed an application to proceed *in forma pauperis* or otherwise notified the Court that they need more time to obtain it: James Lee McClain, Larry McBride, Mikael Bond, D'Andre Perry, and Brent Martin. These Plaintiffs are therefore DISMISSED from this action under Federal Rule of Civil Procedure 41(b) for

¹ The documents Pacheco-Lopez submitted list his first name as "Willmer" and not "William," as recorded on the docket. The complaint also shows the name "Willmer." The Clerk is DIRECTED to modify the docket to correct Pacheco-Lopez's first name.

² After receipt of Pacheco-Lopez's *in forma pauperis* affidavit, a duplicate copy of the Court's order sent to him was returned as undeliverable, marked "unable to forward." (ECF No. 22.) Pacheco-Lopez is reminded that he must keep the Court informed of his current address or risk dismissal of his claims.

failure to comply with the Court's order. Plaintiff McClain also previously moved for injunctive relief related to his state criminal proceeding. (ECF No. 10.) Because the Court is dismissing him from this matter, that motion is DENIED.

The remaining twenty-two Plaintiffs have not filed the necessary paperwork and the orders sent to them were returned to the Court either as "Undeliverable" or with a notation that the inmate has been released or is no longer there. The most basic responsibility of a litigant is to keep the Court advised of his whereabouts, but these Plaintiff have failed to do so. Therefore, it appears they also do not intend to participate in this action. Accordingly, Plaintiffs Bobbitt, Tims, Douglas, Lee, Chapman, Murray, Whisnant, Glidewell, Kirk, Patmon, Hunt, Deem, Williams, C. Greer, Love, Boykin, Kerr, Blaylock, Mctizic, Long, Simmons, and S. Bond are DISMISSED from this matter under Federal Rule of Civil Procedure 41(b) for failure to comply with the Court's order.

On July 24, 2019, Tony Latrell Greer, Sr., moved to be added as a Plaintiff in this matter. (ECF No. 19.) However, the same day, Greer and ten other prisoners filed a separate complaint with the same allegations against the same Defendants. *See Greer v. Madison County Sheriff's Dep't*, No. 1:19-cv-01149-JDT-cgc (W.D. Tenn.). That separate matter will adequately address Greer's complaint. His motion to be added as a Plaintiff in this matter is therefore DENIED.

In conclusion, Plaintiffs Pacheco-Lopez and Horton are the only remaining Plaintiffs in this matter. The Court GRANTS Pacheco-Lopez leave to proceed *in forma pauperis* and GRANTS Horton until September 6, 2019, to file with the Court a copy of his trust account statement for the previous six months. If Horton complies with this order

in a timely manner, the Court will grant his motion to proceed *in forma pauperis*, assess his share of the filing fee, and allow him to remain in this matter. The Court will screen the complaint in accordance with 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b) in a separate order. All other Plaintiffs are DISMISSED from this matter. Plaintiff McClain's motion for an injunction (ECF No. 10) is DENIED as moot. Tony Greer, Sr.'s motion to be added to this case (ECF No. 19) is DENIED.³

IT IS SO ORDERED.

s/ James D. Todd
JAMES D. TODD
UNITED STATES DISTRICT JUDGE

³ Greer was added as a Plaintiff on the docket, but the Court had not granted his motion to join this action. The Clerk is DIRECTED to remove Tony Latrell Greer as a listed Plaintiff.